

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AVIGAIL YEBRA

Claimant

VS.

IBP, INC.

Respondent,
Self-Insured

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Docket No. 230,558

ORDER

Claimant appealed the April 2, 2001 Decision entered by Administrative Law Judge Pamela J. Fuller.

The Director of the Division of Workers Compensation appointed Jeffrey K. Cooper of Topeka, Kansas, to serve as Board Member Pro Tem in place of Gary M. Korte, who recused himself from this proceeding.

ISSUES

This is a post-award request for medical treatment. The Judge initially decided this claim in a decision dated July 31, 2000, in which the Judge awarded claimant a five percent permanent partial general disability for an April 5, 1997 work-related accident.

Claimant now contends that she needs additional medical treatment and such treatment is directly related to the April 1997 accident. Claimant also contends that she is entitled to receive an award for her attorney fees. But after conducting a March 12, 2001 hearing and reviewing various medical reports that had been stipulated into the record, Judge Fuller denied claimant's requests for additional medical benefits and attorney fees.

Claimant contends Judge Fuller erred. Claimant argues that it would seriously prejudice employees if they were required to establish their need for post-award medical treatment through medical evidence. Claimant admits that she does not know if there is any medical treatment presently available that would benefit her. But claimant argues that it is not uncommon for injured workers to have occasional flare-ups that require therapy or prescription medication. Claimant requests the Board to reverse the Judge and order respondent to provide additional treatment. Claimant also requests the Board to order attorney fees at \$125 per hour for six hours, or \$750.

Conversely, respondent contends the April 2, 2001 Decision denying both additional medical benefits and attorney fees should be affirmed.

The only issues before the Board on this appeal are:

1. Is claimant required to prove she needs additional medical treatment and the relationship between that treatment and her April 5, 1997 work-related accident before she is entitled to receive an award for post-award medical benefits?
2. Under the facts presented, is claimant entitled to receive an award for attorney fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. For the reasons explained below, the order denying claimant's request for medical treatment should be affirmed. But the Board reverses the denial of attorney fees and awards claimant \$750.
2. In a July 31, 2000 Decision, Judge Fuller awarded claimant a five percent permanent partial general disability for an April 5, 1997 accident and resulting upper back injury.
3. The last physician to provide authorized treatment to claimant was Dr. C. Reiff Brown, who released claimant from treatment in February 1999. Other than seeing Dr. Pedro Murati for an evaluation in May 1999 and Dr. Philip Mills for a court-ordered evaluation in September 1999, claimant did not see another doctor until late January 2001, when she visited a Dodge City hospital emergency room for upper back pain.
4. At the Judge's request, Dr. Mills examined claimant in September 1999 and issued a report. Dr. Mills noted claimant's May 1999 evaluation with Dr. Murati, who had recommended additional medical treatment, including physical therapy, a TENS unit, and possible trigger point injections. Conversely, Dr. Mills concluded that no further medical treatment was required and that claimant had reached maximum medical improvement.
5. Claimant's present request for additional medical benefits rests solely on her contention that she is experiencing upper back pain in the same part of her body as that caused by the April 1997 accident. Claimant has presented no other evidence to prove her present symptoms are related to the April 1997 accident or that there is any medical treatment that may benefit her. Additionally, the record is unclear as to whether claimant's upper back pain ever resolved following the April 1997 accident or whether her back symptoms were aggravated by her work for subsequent employers.

6. Considering the approximate four years that have elapsed since the accident, the fact that claimant has worked for at least one other employer following the accident, and the general lack of evidence to directly relate claimant's present symptoms to her work-related accident, the Board concludes that claimant has failed to prove that her present symptoms are directly related to the April 1997 accident or that she presently needs medical treatment as a result of that accident. Therefore, the Judge did not err by denying claimant's request for post-award medical treatment.

7. Depending upon the circumstances, injured workers may decide to present medical evidence to establish their right to additional medical treatment. Although expert medical opinions are not required by the Workers Compensation Act, they may be determinative. The Board agrees with claimant that injured workers are at times disadvantaged when it comes to obtaining medical evidence for proving the need for additional medical treatment. The Board also agrees with claimant that this type of situation is well-suited for a judge to order an independent medical evaluation. But the Board recognizes that the administrative law judges have the discretion to order medical evaluations. Additionally, the Board recognizes that injured workers have the burden of proof under the Workers Compensation Act.

8. The Board concludes that claimant's request for attorney fees should be granted in the sum of \$750. Claimant may be granted attorney fees for services rendered in proceedings for post-award medical benefits.¹ Upon claimant's request for additional medical benefits, respondent refused the request without authorizing claimant to see a doctor for further treatment recommendations. Under the facts presented, the Board concludes that claimant's request for additional medical benefits had merit and was made in good faith. The Board concludes claimant should receive a reasonable sum for attorney fees. Therefore, the Board finds the claim for six hours at \$125 per hour, or \$750, is reasonable for the services rendered at both the administrative law judge and appellate levels.

9. The Board adopts the findings and conclusions set forth in the April 2, 2001 Decision that are not inconsistent with the above.

AWARD

WHEREFORE, the Board modifies the April 2, 2001 Decision entered by Judge Fuller to grant claimant \$750 in attorney fees.

The Board adopts the remaining orders set forth in the Decision that are not inconsistent with the above.

¹ K.S.A. 44-536(g).

IT IS SO ORDERED.

Dated this ____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Wendel W. Wurst, Garden City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director